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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FILE

In re Applications of

Robert B. Taylor
Jupiter, Florida

For Renewal of Station WTRU(FM)

Jupiter Broadcasting, Corp.
Jupiter, Florida

For a Construction Permit

MM Docket No. 92-114

FCC File No. BRH-880926UJ

FCC File No. BPH-890103MD

To: Honorable Walter C. Miller
Administrative Law Judge

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MAY 27 1992

Federal Communications Commission
Office of the Secretary

FIRST PETITION TO ENLARGE ISSUES AGAINST
ROBERT B. TAYLOR

Respectfully submitted,
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Counsel for
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May 22, 1992

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SUMMARY

Jupiter Broadcasting Corp. (JBC) seeks specification of issues inquiring into (a) Robert B. Taylor's failure to maintain a public file for Stations WEXI(AM) and WTRU(FM), Jupiter, Florida; (b) Robert B. Taylor's false statement in the WEXI/WTRU renewal applications to the effect that "the applicant placed in its public inspection file at the appropriate times the documentation required by Section 73.3526...of the Commission's Rules;" (c) Robert B. Taylor's actions silencing Station WTRU(FM) from March 1987 until May 1989; (d) Robert B. Taylor's actions silencing Station WEXI(AM) from March 1987 until January 30, 1992 when the station was deleted at Mr. Taylor's request; (e) Robert B. Taylor's false statement in requests for silence authority concerning progress he made in returning Station WEXI(AM) to the air; (f) Robert B. Taylor's failure to provide local public notice of the filing of WTRU(FM)'s renewal application; (g) the failure of Stations WEXI/WTRU to broadcast programs treating the problems, interests and needs of their service area; (h) Robert B. Taylor's false representation in the WEXI(AM) renewal application to the effect that access to the station's antenna tower is impeded; (i) Robert B. Taylor's activities in the Jupiter FM rule making where he caused his corporation to file a sham counterproposal for a White City, Florida FM allotment; (j) Robert B. Taylor's financial qualifications to operate WTRU; (k) Robert B. Taylor's attempt to induce JBC to enter into a settlement violative of Rule 73.3523 and his offer of a false affidavit to conceal the facts of the

settlement from the Commission; (l) Robert B. Taylor's threat to file against the renewal application of Station WPBF-TV, Tequesta, Florida if JBC continued to challenge his Jupiter, Florida renewals; (m) Robert B. Taylor's unusually poor past broadcast record and (n) Robert B. Taylor's apparent inability to comply with Commission Rules and policies or to provide accurate and complete data in submissions to the Commission.

PETITION TO ENLARGE ISSUES

1. Pursuant to Rule 1.229, Jupiter Broadcasting Corp. ("JBC") seeks enlargement of issues against Robert B. Taylor. JBC submits that such action is warranted because, among other things, Mr. Taylor and/or his stations (a) have not maintained public files as required by Rule 73.3526; (b) have misrepresented facts concerning their public file; (c) have kept Stations WEXI(AM) and WTRU(FM) off-the-air in contravention of Rule 73.1740; (d) have misrepresented facts concerning the status of efforts to reactivate Stations WEXI(AM) and WTRU(FM); (e) have failed to comply with the public notice requirements relating to renewal applications; (f) have failed to broadcast programs treating the problems, interests and needs of Jupiter, Florida; (g) have filed a sham counterproposal in the rule making to allot FM channel 288A to Jupiter, Florida; (h) have offered to provide JBC perjured testimony to induce settlement of this proceeding; and (i) have threatened to institute FCC proceedings against Station WPBF-TV, Tequesta, Florida in an attempt to extort settlement of this proceeding.

PARTIES AND CALL SIGNS

2. Robert B. Taylor has controlled his AM and FM stations in Jupiter, Florida since September 18, 1984.¹ During Mr. Taylor's

¹Mr. Taylor's AM renewal application was dismissed at Mr. Taylor's request by letter dated January 30, 1992 from the Chief, AM Branch. The AM and FM stations were co-located and operated together. JBC submits that Mr. Taylor's request for dismissal of his AM license renewal was a stratagem designed to remove his misconduct at the AM station from consideration in his FM license renewal proceeding. The facts set out herein demonstrate that Mr.

stewardship, these stations have been held by various entities² and have been assigned various call signs.³ For ease of reference, this Petition to Enlarge Issues refers to the licensee of these stations as Mr. Taylor and to the call signs of these stations as WEXI(AM) and WTRU(FM).

PUBLIC FILE ISSUE

3. Robert B. Taylor does not maintain the public file required by Rule 73.3526 for Stations WEXI and WTRU. On January 18, 1989 Paul Levine and Charles Reid visited the stations' studios. They asked Mr. Taylor to see the public file. The only documents Mr. Taylor made available were JBC's own applications and the petition to deny Mr. Taylor's renewals filed by Jose Oaks.⁴

4. On July 12, 1990 Joseph Belisle and Charles Reid visited the studios of Stations WEXI(AM) and WTRU(FM). They asked Steve May, the WTRU program director, to see the stations' public files. When no files were produced, Mr. May contacted Mr. Robert Taylor by telephone. Mr. Taylor and Joseph Belisle conversed concerning the availability of the public file. Mr. Taylor agreed to copy the

Taylor's actions in connection with the co-located Jupiter AM Station raise questions concerning his qualifications to remain a Commission licensee.

²The AM station has been owned by (1) U.S. Two Broadcasting Corp., a subsidiary of R & R Broadcasting Corp. and by (2) Robert B. Taylor, individually. The FM station has been owned by (1) U.S. Three Broadcasting Corp., a subsidiary of R & R Broadcasting Corp. and by (2) Robert B. Taylor, individually.

³The AM call signs have been WWSI, WTRU and WEXI. The FM call signs have been WWSI-FM, WKSX and WTRU.

⁴See Declaration of Paul Levine appended hereto as Exhibit 1.

public file and send it to Mr. Belisle.⁵

5. On July 12, 1990 counsel for JBC sent Robert Taylor the following letter, confirming his understanding of Mr. Taylor's agreement with respect to the WEXI/WTRU public file:

VIA FEDERAL EXPRESS

Mr. Robert B. Taylor
Stations WEXI(AM) and WTRU(FM)
500 North Delaware Boulevard
Jupiter, Florida 33458

Dear Mr. Taylor:

This is to confirm the conversation we had this morning with respect to the public file for Stations WEXI(AM) and WTRU(FM), Jupiter, Florida. Steve May was unable to make this file available to Chuck Reid and me this morning when we stopped by the stations' studios. However, you have agreed to copy the public file and send it to me within a week. I have agreed to pay your photocopying and postage costs.

To assist you in identifying the documents I am seeking, I left a copy of the public file rule, Rule 73.3526, with Steve May. I'm enclosing a second copy of the rule with this letter. The specific documents I need are described in subparts (a) (1), (a) (2), (a) (3), (a) (4), (a) (5), (a) (6), (a) (7), (a) (9) and (a) (10) of Rule 73.3526.

Thank you for your cooperation in this matter.

Sincerely yours,

Joseph A. Belisle⁶

6. On July 16, 1990 counsel for JBC received the following letter from Mr. Taylor:

⁵See Declarations of Charles E. Reid, Tania M. Sanchez, Deborah Pelland and Laura Fajardo appended hereto as Exhibits 2, 3, 4 and 5, respectively.

⁶See Exhibit 3.

July 12, 1990

Joseph A. Belisle
Leibowitz & Spencer
Amerifirst Building, Suite 1450
One S.E. Third Avenue
Miami, Florida 33131

Dear Mr. Belisle:

Enclosed are copies of the WTRU public file documents which I have with me today.

The complete WTRU public file is in my office at the radio station building in Jupiter. I am temporarily in Indiana on business. As we agreed in our telephone conversation today, upon returning to my Jupiter office I will photocopy the other documents in the WTRU public file and mail them to you in Miami.

Sincerely,

Robert B. Taylor
Licensee, WTRU (FM)
Licensee, WEXI (AM)

Enclosed with Mr. Taylor's letter were the following documents comprising twenty one pages:

- (a) Letter dated 4/6/89 from Robert B. Taylor to Donna R. Searcy transmitting a petition to deny JBC's AM application, BP-890103AB;
- (b) Petition to Deny dated 4/6/89 opposing JBC's AM application, BP-890103AB;
- (c) Letter dated 7/20/89 from Robert B. Taylor to Donna R. Searcy transmitting a petition to deny JBC's FM application, BPH-890103MD; and
- (d) Petition to Deny dated 7/20/89 opposing JBC's FM application, BPH-890103MD.

See Declaration of Deborah Pelland, Exhibit 4, hereto.

7. On July 25, 1990, counsel for JBC sent Robert Taylor the following letter requesting the remainder of the WEXI/WTRU public

file:

VIA FEDERAL EXPRESS

Mr. Robert B. Taylor
Stations WTRU/WEXI
500 North Delaware Boulevard
Jupiter, Florida 33458

Dear Mr. Taylor:

It is two weeks since Chuck Reid and I visited the studio of Stations WTRU/WEXI seeking to examine the stations' public file. When no public file materials were available for Mr. Reid's and my examination, you agreed to copy the public file and send it to me within a week. I agreed to pay your photocopying and postage costs.

To date, you have sent me the following materials:

- 1) Letter dated April 6, 1989 from Robert B. Taylor to Donna R. Searcy transmitting Petition to Deny Jupiter Broadcasting Corp.'s application (FCC File No. BP-890103AB).
- 2) Petition to Deny Jupiter Broadcasting Corp.'s application (FCC File No. BP-890103AB).
- 3) Letter dated July 20, 1989 from Robert B. Taylor to Donna R. Searcy transmitting Petition to Deny Jupiter Broadcasting Corp.'s application (FCC File No. BPH-890103MD).
- 4) Petition to Deny Jupiter Broadcasting Corp.'s application FCC File No. BPH-890103MD).

Please send me copies of the remaining public file materials for Station WTRU and WEXI immediately. A return pre-paid Federal Express envelope is enclosed for your convenience.

It is unreasonable to withhold copies of the stations' public file for two weeks, after agreeing to provide copies within one week. I need an accurate account of the documents that Stations WTRU and WEXI maintain for public inspection. These documents are important to my representation of Jupiter Broadcasting Corp. in the pending comparative renewal proceeding for Stations WTRU/WEXI.

Once again, I am enclosing a copy of the FCC's public file rule, Rule 73.3526, to assist you in making records available.

Thank you for your prompt attention to this request.

Sincerely yours,

Joseph A. Belisle
Counsel for
Jupiter Broadcast Corporation⁷

8. No timely response to JBC's counsel's July 25, 1990 letter was received. On August 20, 1990, Charles Reid visited the WEXI/WTRU studios and again requested the stations' public file. No public file documents were made available to Mr. Reid.⁸

9. On August 20, 1990 JBC's counsel sent the following letter to Stations WTRU/WEXI's program director:

VIA FEDERAL EXPRESS

Mr. Steve May
Program Director
Stations WTRU/WEXI
500 North Delaware Boulevard
Jupiter, Florida 33458

Dear Mr. May:

I am informed by Charles Reid that he visited your stations' studio during normal business hours today and asked to see your stations' public files. Mr. Reid tells me that you had no public file materials for him to examine.

You will recall that Mr. Reid and I visited you at Stations WTRU/WEXI on July 12 of this year. At that time you had no public file materials to review. However, you called Mr. Taylor (in Michigan) and he agreed to photocopy the public file and mail it to me.

To date, I have received the following materials from WTRU/WEXI:

- 1) Letter dated April 6, 1989 from Robert B. Taylor to Donna R. Searcy transmitting Petition to Deny Jupiter Broadcasting Corp.'s application (FCC File No. BP-890103AB).

⁷See Declaration of Tania M. Sanchez attached hereto as Exhibit 6.

⁸See Exhibit 2.

- 2) Petition to Deny Jupiter Broadcasting Corp.'s application (FCC File No. BP-890103AB).
- 3) Letter dated July 20, 1989 from Robert B. Taylor to Donna R. Searcy transmitting Petition to Deny Jupiter Broadcasting Corp.'s application (FCC File No. BPH-890103MD).
- 4) Petition to Deny Jupiter Broadcasting Corp.'s application FCC File No. BPH-890103MD).

Please send me copies of any remaining public file materials maintained for Stations WTRU and WEXI immediately. A return pre-paid Federal Express envelope is enclosed for your convenience.

As I have previously informed Mr. Taylor, I require an accurate account of the documents that Station's WTRU and WEXI maintain for public inspection.

These documents are important to my representation of Jupiter Broadcasting Corp. in the pending comparative renewal proceeding for Stations WTRU/WEXI.

Once again, I am enclosing a copy of the FCC's public File rule, Rule 73.3526, to assist you in making records available.

Thank you for your prompt attention to this request.

Sincerely yours,

Joseph A. Belisle
Counsel for
Jupiter Broadcast Corporation⁹

10. JBC's August 20, 1990 letter was delivered to Stations WEXI/WTRU but was subsequently returned to JBC's counsel at the request of the recipient. See Exhibit 8.

11. On September 25, 1990, counsel for JBC received the following letter (dated September 17, 1990) purporting to include

⁹See Declaration of Tania M. Sanchez appended hereto as Exhibit 7.

the remaining items of the WEXI/WTRU public file:

Joseph A. Belisle
1 S.E. Third Ave., Suite 1450
Miami, Florida 33131

Dear Mr. Belisle:

Your distortion of our telephone agreement of July 12, 1990, is reprehensible. I did agree to photocopy the public file and send it to you. I explained to you this would occur upon my return to Jupiter from Indiana where I operate another radio station. I returned today.

I consider your actions in this matter to be nothing short of harassment. I explained to you that the documents in the public file are the same as they were last year when you clients Paul Levine and Charles Reid examined these same papers.

Although you knew I was in Indiana and Michigan, you sent multiple Federal Express deliveries to my Jupiter office for no reason. You even insisted on harassing my employees by sending correspondence directly to my employee Steve May.

At this time I warn you: Do not contact my employees and do not attempt to interrupt my business.

Enclosed are copies of the other items in the public file. In the future you will get better results if you contact me directly and set up an appointment in advance.

Sincerely,

Robert B. Taylor
Licensee, WTRU & WEXI¹⁰

12. Enclosed with Mr. Taylor's September 17, 1990 letter were the following documents:

- (a) Application for Renewal of License for WKSX(FM) [now WTRU], Jupiter, Florida dated 9/22/88;
- (b) Application for Renewal of License for WTRU(AM) [now WEXI], Jupiter, Florida dated 9/22/88;

¹⁰See Exhibit 5.

- (c) Ownership Report for Station WKSJ(FM) [now WTRU] dated 9/22/88;
- (d) Annual Employment Report 1990 for Station WTRU(FM) dated 5/18/90;
- (e) Annual Employment Report 1990 for Station WEXI dated 5/18/90;
- (f) Letter dated 1/27/89 from Robert B. Taylor to Donna R. Searcy transmitting an opposition to petition to deny;
- (g) Opposition to Petition to Deny dated 1/27/89 filed on behalf of Station WKSJ [now WTRU] in FCC File No. BRH-880926UJ;
- (h) Letter dated 1/3/89 from Nora E. Garrote to Donna R. Searcy transmitting a petition to deny the WSKY (FM) [now WTRU] renewal application; and
- (i) Petition to Deny the WSKY (FM) [now WTRU] renewal application filed by Jose Oaks on 1/3/89.¹¹

13. The facts set out above demonstrate that Robert Taylor made no meaningful effort to maintain a public inspection file for Stations WEXI and WTRU. First, there is no public inspection file available at the stations' studio during normal business hours.¹² Parties requesting machine copies of the stations' public inspection file must make repeated efforts over several weeks to obtain documents relevant to the stations.¹³ Moreover, most of the documents required to be placed in the public file don't exist.

14. Specifically, Stations WEXI/WTRU's public file contains

¹¹See Exhibit 5.

¹²See 47 C.F.R. §73.3526(d). This fact is confirmed by the declarations of former station employees Steve May, Sheri McKin and Lorraine Popovich attached hereto as Exhibits 13, 14 and 15, respectively.

¹³Such copies are required to be furnished within seven days. See 47 C.F.R. §73.3526(f).

no issues/programs lists.¹⁴ It omits all records relating to broadcasts by candidates for public office.¹⁵ It contains only a portion of the documents required to be filed with license renewal applications.¹⁶ It omits annual employment reports for years 1981-1989.¹⁷ It contains no letters from the public.¹⁸

15. The seriousness of Mr. Taylor's public file violations is demonstrated by reference to the Review Board's holding in Safe Broadcasting Corp. 5 FCC Rcd. 4917 (Rev. Bd. 1990). There, in remanding a proceeding for hearing on public file and misrepresentation issues, the Review Board observed:

The Commission now requires very little record-keeping of its licensees. However, the preparation and maintenance of "issues programs" lists for inclusion in the station's public inspection file remains a minimal requirement for operating in the public interest. See Deregulation of Radio (Report and Order), 84 FCC 2d 968 (1981), recon. granted in part, 87 FCC 2d 797 (1981), aff'd in part and remanded in part sub nom. Office of Communications of United Church of Christ v. FCC. 707 F. 2d 1413 (D.C. Cir. 1983): Deregulation of Radio (Second Report and

¹⁴These lists must be placed in the stations' public file quarterly. See 47 C.F.R. §73.3526(a)(9).

¹⁵See 47 C.F.R. §§73.3526(a)(4) and 73.1940(d).

¹⁶It contains no Broadcast Equal Employment Opportunity Report, FCC Form 396. It contains no data with respect to the station's compliance with the ANSI standards for exposure of humans to non-ionizing radiation.

¹⁷See 47 C.F.R. §73.3526(a)(5).

¹⁸See 47 C.F.R. §73.3526(a)(7).

Order), 96 FCC 2d 930 (1984), reversed and remanded Office of Communications of United Church of Christ v. FCC., 779 F. 2d 702 (D.C. Cir. 1985): Deregulation of Radio, 104 FCC 2d 505 (1986). See also Catoctin Broadcasting Corp. of New York., 2 FCC Rcd 2126 (Rev. Bd.1987). aff'd 4 FCC Rcd 2553 (1989). recon. denied, 4 FCC Rcd 6312 (1989) (renewal of license denied where. inter alia. licensee deceived as to "issues programs" lists).

Safe Broadcasting Corp. at 4918.

16. It is clear from the discussion above, that Stations WEXI and WTRU failed to meet the requirements of Rule 73.3526 concerning public inspection files. The following issue should be specified against Mr. Taylor:

To determine whether Robert B. Taylor properly prepared and maintained the local public inspection file of Stations WEXI(AM) and WTRU(FM) pursuant to Rule 73.3526, and, if not, the effect thereof on that applicant's basic qualifications to remain Commission licensee.¹⁹

PUBLIC FILE MISREPRESENTATION ISSUE

17. Stations WEXI(AM) and WTRU(FM) did not maintain the public inspection files required by Rule 73.3526. See supra paras. 2-15. Nonetheless in the license renewal applications for these stations, Robert B. Taylor answered the following inquiry in the affirmative:

Has the applicant placed in its public inspection file at the appropriate times the

¹⁹This is substantially the same public file issue specified in Safe Broadcasting Corp. at 4919.

documentation required by Section 73.3526 or 73.3527 of the Commission's rules.²⁰

JBC submits that Mr. Taylor's affirmative answer was a false statement of material fact made with the intention to deceive the Commission.

18. Mr. Taylor's obvious motive for deceiving the Commission with respect to the WEXI/WTRU public file was to conceal the stations' failure to meet minimum public interest programming and recordkeeping requirements. His efforts to obtain license renewal through deception merit specification of the following issue:

To determine whether Robert Taylor misrepresented the condition of the WEXI/WTRU public file in the stations' license renewal applications and, if so, the effect thereof on the applicant's qualifications to remain a Commission licensee.

FM SILENCE AUTHORITY ISSUES

19. Robert B. Taylor acquired control of Station WTRU(FM) on September 18, 1984. In the seven years Mr. Taylor has owned Station WTRU(FM), he kept the station dark for over two years. While Rule 73.1740 (a)(4) contemplates that stations can discontinue operation when "causes beyond the control of a licensee make it impossible...to continue operating," Robert Taylor kept Station WTRU(FM) dark solely for reasons within his control. His misuse of FCC silence authority is chronicled below.

²⁰The WEXI(AM) and WTRU(FM) renewal applications are attached hereto as Exhibit 9. At the time these applications were filed, the stations' call signs were WTRU(AM) and WKSJ(FM). The licensees at that time were corporations wholly owned by Robert B. Taylor. Mr. Taylor signed both renewal applications.

20. On December 29, 1986, Robert Taylor began taking steps to turn off his Jupiter, Florida radio stations. He laid-off the stations' non-air staff. When asked by the receptionist for an explanation of why she was fired, he said he was closing the station because he wasn't making any money.²¹

21. By March of 1987, Robert Taylor had completely silenced his Jupiter, Florida stations. A West Palm Beach County Deputy Sheriff attempted to serve a summons and complaint at the station on March 26, 1987. His report on service of process stated, in part, that the "premises of the radio station appears to be unused for a period of time. The local phone number has been changed to 219/484-0580."²²

22. Mr. Taylor, through counsel, sought silence authority for his Jupiter FM station on April 30, 1987.²³ This April 30, 1987 silence authority request attempted to justify Mr. Taylor's actions taking WTRU(FM) off the air, arguing (a) the reason WTRU(FM) went silent was to accommodate the operation of a new Homestead, Florida FM station; (b) WTRU(FM) might be required to undergo a second frequency change due to a Melbourne, Florida rule making proposal;

²¹See Statement of Sheri McKin appended hereto as Exhibit 14. See also Statement of Lorraine Popovich appended hereto as Exhibit 15.

²²See Exhibit 10. This new telephone number was the telephone number of Mr. Taylor's Fort Wayne, Indiana FM station, WXKE.

²³All documents relating to WTRU(FM)'s silence authority that JBC has been able to obtain from the Commission are appended hereto as Exhibit 11. The original request for authority to remain silent is Exhibit 11, pp 1-2.

(c) multiple frequency changes would disrupt the business of Mr. Taylor's station; and (d) Mr. Taylor could not afford the cost of repeated disruption of his station's business.

23. Mr. Taylor's April 30, 1987 silence authority request was thoroughly disingenuous. It falsified the date that WTRU ceased operations.²⁴ It falsely intimated that WTRU's silence was required by the operation of a new Homestead, Florida FM station.²⁵ It used the Melbourne, Florida rule making proposal, a proposal supported by Mr. Taylor, as the reason why WTRU could not remain operating.²⁶

24. In letters filed with the Commission on July 31, 1987, October 30, 1987 and February 1, 1988, Mr. Taylor sought, and obtained, repeated extensions of WTRU(FM)'s silence authority,

²⁴The April 30, 1987 request stated that the station ceased operations on April 1, 1987. However the station was vacant on March 26, 1987. See supra para. 21.

²⁵The Homestead station, WXDJ, did not commence operations until July 17, 1987, four months after Robert Taylor took Station WTRU off-the-air. See Exhibit No. 20. Moreover, nothing prevented Mr. Taylor from effectuating the WTRU channel change necessary to accommodate the Homestead station. The costs of this channel change were required to be borne by the Homestead station. See Homestead, Florida, 47 RR2d 1280, 1283 (Policy and Rules Div. 1980). Apparently Mr. Taylor simply pocketed the funds for this channel change and turned WTRU off.

²⁶Mr. Taylor's corporation was a proponent of the Jupiter channel change proposed in the Melbourne rule making. He twice filed pleadings in support of the channel change - first supporting the petition for rule making and then supporting the changes proposed in the notice of proposed rule making. See Jupiter and Melbourne, Florida 2 FCC Rcd. 3940 (1987); and Jupiter and Melbourne, Florida, 3 FCC Rcd. 611 (1988). The Melbourne rule making was hardly an event beyond Mr. Taylor's control requiring Station WTRU to remain silent.

based upon his meretricious "uncertain channel allotment" arguments. See Exhibit 11, pp. 4-8, 10-15 and 17-18. The Commission completed its Melbourne, Florida rule making on February 10, 1988, changing the WTRU(FM) allotment to Channel 258A. See Jupiter and Melbourne, Florida, 3 FCC Rcd 611 (1988). Thus, as of February, 1988, all "uncertainty" concerning the WTRU allotment ceased.

25. Mr. Taylor filed an additional WTRU(FM) silence authority request on April 29, 1988. Therein, Mr. Taylor asserted that an FM application to operate on Channel 258A had been prepared and forwarded to the Commission.²⁷ Mr. Taylor asked to remain silent until after the application was granted.²⁸ The application, however, was never granted. It was returned on June 23, 1988, as unacceptable for tender.²⁹

26. On July 28, 1988, Mr. Taylor sought yet another extension of the WTRU(FM) silence authority. See Exhibit 11, pp. 23-24. This extension request proffered the following, rather remarkable, rationale for the extension:

As explained in its letter of April 29, 1988, U.S. Three has filed its modification application with the Commission (File No. BPH-880502IC). That application has not yet been granted. Therefore, the station is not yet in a position to resume operations.

²⁷The application was received at the Commission on May 2, 1988. See BPH-880502IC.

²⁸See Exhibit 11, pp. 20-21.

²⁹See Broadcast Actions, Report No. 20348, released June 29, 1988.

The application that Mr. Taylor's request identified as "not yet...granted" was, of course, the very application that the Commission had returned as unacceptable for tender a month earlier.

27. On August 13, 1989, Robert Taylor filed a second construction permit application to operate WTRU(FM) on Channel 258A. This second application, BPH-880813IE, was granted November 15, 1988. Meanwhile, WTRU(FM)'s silence authority lapsed on November 1, 1988. By letter dated November 9, 1988, Mr. Taylor sought to reinstate WTRU(FM)'s silence authority. This request was granted through February 1, 1989, with the admonition that "no further extension of this authority [was] contemplated." Exhibit 11, p. 28.

28. Predictably, Mr. Taylor did not construct WTRU(FM)'s modified facilities prior to the February 1, 1989 expiration of silence authority. On January 24, 1989 he sent the Commission an extension request for an additional sixty days to construct the modified WTRU(FM) facilities. This request was granted and WTRU(FM) was authorized to remain silent until April 1, 1989. Ex. 11, pp. 29-31.

29. Mr. Taylor's WTRU(FM) silence authority lapsed April 1, 1989. WTRU did not file its channel 258A license application until May 10, 1989. See BLH-890510KC. Apparently Mr. Taylor kept the station silent without Commission authority for the entire month

of April, 1989.³⁰

30. The facts set out above raise, prima facie, several questions concerning Mr. Taylor's qualifications to remain a broadcast licensee. First, they establish that Mr. Taylor kept Station WTRU(FM) silent on at least three occasions without any Commission authority. Specifically, he silenced his station on or before March 26, 1987, but did not seek silence authority until April 30, 1987. He allowed silence authority to lapse in November 1988. He neglected to seek an extension of silence authority for the month of April, 1989.

31. The facts also establish that Mr. Taylor employed deceit to obtain authority to take WTRU(FM) off the air. His original silence authority request falsified the date the station went off the air. His July 28, 1988 extension request was based on the Commission's supposed inaction on a minor modification application (BPH-880502IC). However that application had, in fact, been returned to Mr. Taylor over a month earlier. This deceit had the intended effect. On August 1, 1988, the FM Branch issued an extension of silence authority "pending Commission action on File No. BPH-880502IC." Exhibit 11, p.25.

32. Finally, and most importantly, the facts establish that Mr. Taylor took WTRU(FM) off-the-air solely for reasons within his control. Mr. Taylor claimed that repeated changes in WTRU(FM)'s

³⁰The earliest WTRU could have commenced operations on program test authority was ten days before its license application was filed, i.e. April 30, 1989. See 47 C.F.R. §1620 (a).

allotted frequency would cause him to endure an unreasonable financial burden. The fact is that Mr. Taylor was reimbursed for the first WTRU frequency change and was, himself, the proponent of the second WTRU frequency change.

33. Under the Commission's policy adopted in Circleville, Ohio, 8 FCC 2d 159, 163-64 (1967), Mr. Taylor was entitled to reimbursement for the costs WTRU(FM) incurred as a result of any involuntary channel change made to accommodate another licensee's proposed channel change.³¹ Radio Intermart Corporation paid Mr. Taylor for the reasonable costs he would incur in changing WTRU(FM)'s frequency to accommodate the Homestead, Florida FM allotment.³² Mr. Taylor received this payment even though he never made the channel change contemplated in Homestead Florida, supra.

34. Mr. Taylor was not reimbursed for the WTRU(FM) channel change proposed in the Melbourne, Florida FM allotment proceeding because that channel change was voluntary. WTRU(FM) was a proponent of the Jupiter, Florida channel change advocated in the Melbourne FM rule making. This second WTRU(FM) channel change was an attempt to obtain a frequency that could be upgraded to a higher class FM allotment.

35. Robert Taylor voluntarily proposed a WTRU(FM) channel

³¹Reimbursable costs include cost of engineering, legal representation, technical equipment, printing, advertising and out-of-pocket expenses while the station was off-the-air.

³²Indeed, the Commission's action allotting the Homestead channel expressly contemplated compensation to WTRU(FM) for the costs of its channel change. See Homestead, Florida, 47 RR2d 1280, 1283 (Policy and Rules 1980).

change in the Melbourne Florida FM rule making. Robert Taylor voluntarily silenced WTRU(FM), claiming that the effects of the Melbourne rule making were the cause of the station's silence. Unquestionably WTRU(FM)'s two years of silence were caused solely by Robert Taylor for the financial benefit of Robert Taylor. An appropriate issue should be specified inquiring into this matter.

36. In view of the foregoing, JBC submits that the following issues inquiring into WTRU(FM)'s two year silence are warranted:

To determine whether Robert B. Taylor kept Station WTRU(FM) off-the-air without authority and, if so, the effect thereof upon his qualifications to remain a Commission licensee.

To determine whether Robert B. Taylor misrepresented facts or lacked candor in the requests for authority to keep Station WTRU(FM) off-the-air and, if so, the effect thereof upon his qualifications to remain a Commission licensee.

To determine whether facts beyond the control of Robert B. Taylor required Station WTRU(FM) to remain off-the-air for over two years and, if not, the effect thereof upon his qualifications to remain a Commission licensee.

AM SILENCE AUTHORITY ISSUES

37. Robert B. Taylor acquired control of Station WEXI(AM) on September 18, 1984. He kept the station off-the-air from March of 1987 until the station's deletion on January 30, 1992. While Rule 73.1740(a)(4) contemplates that stations can discontinue operation when "causes beyond the control of a licensee make it impossible...to continue operating," Robert Taylor kept Station WEXI(AM) dark solely for reasons within his control. He did so

without any colorable FCC authority. As demonstrated below, Mr. Taylor's actions silencing WEXI(AM) raise serious questions concerning his qualifications to remain a Commission licensee.

38. Station WEXI(AM) was silenced at the same time WTRU(FM) was taken off the air. Exhibit 11, p.2. Apparently, Mr. Taylor filed a specific request for AM silence authority on May 12, 1987.³³ ³⁴ On May 21, 1987, the AM Branch gave the following response to Mr. Taylor's request:

REF. 8910-ARE. RELET BAYES 5-12-87. TEMPORARY AUTHORITY TO REMAIN SILENT GRANTED THRU 8-17-87, WTRU, JUPITER, FLORIDA, PENDING RESOLUTION OF FINANCIAL DIFFICULTIES AND EQUIPMENT REPAIRS TO TRANSMITTER AND GROUND SYSTEM. ANY REQUEST FOR EXTENSION MUST SHOW SPECIFIC STEPS ARE BEING TAKEN TO RESUME OPERATION. NECESSARY TO MAINTAIN PRESCRIBED TOWER LIGHTING.³⁵

39. Mr. Taylor's next request for AM silence authority was filed August 17, 1987. This request took great pains to show progress toward returning WEXI(AM) to the air. Specifically, the licensee represented:

Since the filing of U.S. Two's previous request for authority for WTRU(AM), the licensee has made substantial progress toward restoring the AM facilities to operational

³³A joint request for AM and FM silence authority was filed April 30, 1987. Ex. 11, p.1. The FM Branch, in acting on this request, directed Mr. Taylor to seek AM silence authority from the AM Branch. Ex. 11, p.3.

³⁴JBC has been unable to obtain the May 12, 1987 request from the Commission's files or from the WEXI(AM) public file. All documents JBC has obtained concerning the various WEXI(AM) requests for silence authority are attached as Exhibit 12.

³⁵See Exhibit 12, p.1.

status. Specifically, the relays in the AM station's primary transmitter have been replaced, and the transmitter is now operational. The station's ground system had been damaged by debris from construction in an adjacent housing development. U.S. Two prevailed upon the contractor to remove the foreign material from the station's ground system, and that system is also now operational.³⁶

40. The AM Branch responded to Mr. Taylor's August 17, 1987 request on December 24, 1987. It extended Mr. Taylor's AM silence authority through February 29, 1988. It also required that "Any request for extension must be accompanied by detailed report of specific steps being taken to return stations to air." Exhibit 12, p.11.

41. Robert Taylor filed for extended AM silence authority on February 29, 1988. Predictably, this request contained a convincing demonstration of steps taken to ready station WEXI(AM) [then WTRU (AM)] for operation. After noting that the station had been silent, in part, because of the need for repairs, the licensee represented that "The repair work has now been completed, and it is only the financial impossibility of stand-alone operation which detains WTRU from returning to the air." Exhibit 12, pp. 12-13. This explanation was credited and Mr. Taylor's AM silence authority was extended through May 2, 1988. Exhibit 12, p. 14.

42. WEXI(AM)'s silence authority was extended to July 31, 1988 in response to a May 2, 1988 extension request. Exhibit 12, p. 15. On July 28, 1988, the licensee sought additional authority to keep WEXI(AM) off the air, again explaining that WEXI(AM) [then

³⁶Exhibit 12. p.3.